Management Training Corporation *and* Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 222. Case 27–RC–7473

December 18, 1995

ORDER DENYING MOTION

BY CHAIRMAN GOULD AND MEMBERS BROWNING, COHEN, AND TRUESDALE

On July 28, 1995, the Board issued its Decision on Review and Order in the above-entitled proceeding asserting jurisdiction over the Employer, which operates a job corps center pursuant to a contract with the United States Department of Labor.[1] In its decision, the Board overruled *Res-Care, Inc.*, 280 NLRB 670 (1980), and established a new test for the assertion of jurisdiction over employers that operate under contracts with governmental entities: in determining jurisdiction, the Board will only consider whether the employer meets the definition of ''employer'' under Section 2(2) of the Act, and whether such employer meets the applicable monetary jurisdictional standards.[2]

On August 25, 1995, the Employer filed a motion for reconsideration. For the reasons that follow, the motion is denied.

In our decision we noted that *Res-Care* appeared inconsistent with Federal legislation governing the relationship between contracting private employers and government agencies, because such legislation contemplated that employers might be unionized and that terms and conditions of employment might be established through collective bargaining. Among other things, we cited U.S. Department of Labor (DOL) regulations governing the job corps program, which provided that private contractors would develop personnel policies and establish labor management relations in accordance with the provisions of the National Labor Relations Act. See 20 CFR §§ 684.120(b)(3) and (5).

In its motion, the Employer asserts that the Board, in deciding to overrule *Res-Care*, erred in relying on 20 CFR § § 684.120(b)(3) and (5) because those provisions have been superseded. See 55 Fed. Reg. 12992, 13007 (1990). Although we agree that the language of §§ 684.120(b)(3) and (5) no longer appears in the DOL regulations, we note that those provisions were in force when *Res-Care* issued, and thus the Board's decision in *Res-Care* was, at the time, at odds with the DOL regulations implementing the job corps program. Further, we note that the language of the current DOL job corps regulations also contemplates that job corps contractors might be unionized. Thus, 20 CFR § 638.814(d) prohibits the use of any funds provided to an employer under the Job Training Partnership Act for any activities that assist, promote, or deter union organizing. Likewise, the Job Training Partnership Act itself provides: ''No program under this Act shall impair . . . existing collective bargaining agreements, unless the employer and the labor organization concur in writing with respect to any elements of the proposed activities which affect such agreement, or either such party fails to respond to written notification requesting its concurrence within 30 days of receipt thereof.'' 29 U.S.C.A. § 1553(b)(2) (1995 cumulative annual pocket part).[3] These provisions clearly contemplate that private employers operating under the Job Training Partnership Act, like the Employer here, might be unionized or that their employees might seek to be represented by a union.

The Employer also asserts that it should be given the opportunity to further address the various grounds relied upon by the Board for overruling *Res-Care*. The Employer suggests that the Board either utilize the rulemaking process to establish jurisdiction or, if the Board wishes to use the adjudicative process, the case should be remanded to the Regional Director for an evidentiary hearing and further briefing and oral argument before the Board.

We see no need for rulemaking or for a hearing in this case as the facts were uncontested and known to all the parties. Moreover, as fully set forth in our prior decision in this proceeding, the Board has had extensive experience with the judicial issues presented in this proceeding. Under these circumstances, we find that the issues presented in this case are neither novel nor so complex as to justify further briefing or oral argument.

The Employer also argues that the Board's discussion of Service Contract Act cases is irrelevant, that *Res-Care* has not been inconsistently applied, that the Board should not have focused on noneconomic matters as those terms are also controlled by the government, and that any new test should require a showing that an employer has a certain degree of control over employment conditions before jurisdiction is asserted.

[1] 317 NLRB 1355.

[2] Member Cohen dissented from that decision.

[3] The job corps program is currently conducted under the authority of the Job Training Partnership Act, Pub. L. 97–300, 96 Stat. 1322, 29 U.S.C. § 1501, 1691 et seq., as amended (JTPA). The same program was previously authorized under the Economic Opportunity Act of 1964, Pub. L. 88–452, §§ 101–109, 78 Stat. 508, 508–511 (repealed 1981), and the Comprehensive Employment and Training Act of 1973, Pub. L. 93–203, Title IV, 87 Stat. 839, 863–874 (repealed 1982) (CETA). The superseded DOL regulations to which the Board referred in its prior decision in this case were promulgated under the authority of CETA; the current regulations were promulgated by DOL in 1990 to take account of the changes in Federal job training programs, including the job corps, under the JTPA. See 55 Fed. Reg. 12992, 12995 (1990). As noted above, those changes are not material to the issues presented in this proceeding.

These contentions have already been fully considered by the Board, and we find them to be lacking in merit.

ORDER

The Employer's motion for reconsideration is denied.

MEMBER COHEN, dissenting.

For the reasons set forth in my dissenting opinion in the Board's Decision on Review and Order, I would grant the Employer's motion for reconsideration and reverse the Board's Decision.